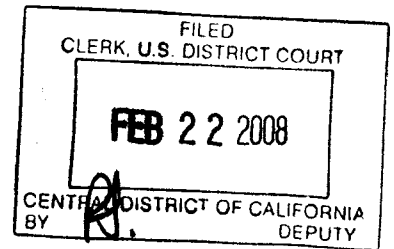


SCAN

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA



UNITED STATES OF AMERICA,

Plaintiff,

v.

EARL C. BOGANS,

Defendant.

CASE NO. CR-99-1099-R-

DEFENDANT'S MOTION FOR RECONSIDERATION OF HIS 18 U.S.C. § 3582(c) (2) MOTION.

There is nothing new in this motion. This court is without jurisdiction.
[Signature]
2-26-08

COMES now the defendant, above-named and appearing Pro se, and respectfully moves for reconsideration of the denial of his 18 U.S.C. § 3582(c)(2) motion, wherein the district court does have jurisdiction to grant the relief raised thereof.

-1-

That this motion is made and based upon the annexed memorandum of authorities and all pleadings and papers on file herein.

Dated this 19 day of February, 2008.

Respectfully submitted,

Earl C. Bogans

Earl C. Bogans

#17382-112

Federal Correctional Institution

P.O.Box 3007

Terminal Island

San Pedro, CA 90731

MEMORANDUM OF AUTHORITIES

on February 8, 2008, the Court entered an order denying the defendant's 18 U.S.C. § 3582(c)(2) motion, wherein the Sentencing Commission eliminated the two point enhancement for all offenses involving 924(c) convictions pursuant to Amendment 599.

The district court reason for the denial of defendant's 3582 (c)(2) motion, was that the Court did not have jurisdiction to grant the relief raised by the defendant. However, the Court erred in the denial of the defendant's 3582(c)(2) motion. See United States v. Townsend, 98 F.3d 115 (9th Cir. 1996). Manuel L. Real, presiding Judge, D.C. NO. Cr-92-00498-R, Criminal Law, 996(1.1) 1147.

Decision whether to reduce sentence under statutory provision pertaining to modification of imposed term of imprisonment is within the district court judge, and denial of motion to reduce is reviewed for abuse of that discretion. 18 U.S.C. § 3582(c)(2).

Under § 3582(c)(2), the district court may reduce a defendant's term of imprisonment if the sentence was based on a sentencing range that has been subsequently lowered by the Sentencing Commission, provided that the court considers the relevant factors enumerated in § 3553(a) and provided that the reduction is consistent with applicable Sentencing Guidelines policy statement.

In addition, 18 U.S.C. § 3582(c)(2), provides for all district courts with jurisdiction to resentence a defendant for an amendment that has been **modified, or eliminated** by the Sentencing Commission.

United States Sentencing Guidelines § 2K2.4 cmt N.2 (2000). Amendment 599 eliminated Bogans two-level enhancement for the carjacking because the two-level enhancement used for sentencing was consider an

element of the offense that constituted the defendant's conviction for the sentence of the 924(c).

CONCLUSION

The defendant posit that the district court does have jurisdiction to grant the relief raised by the defendant in his 18 U.S.C. § 3582(c)(2) motion, pursuant to Aendment 599, which has eliminated the two-level enhancement for 924(c) offenses.

PROOF OF SERVICE

Carol Peterson
Assistance U.S. Attorney
312 North Spring Street
1500 Courthouse
Los Angeles, CA 90012

Dated this 19 day of Febuary, 2008.

Respectfully submitted,

Earl C. Bogans
Earl C. Bogans